



STAFF REPORT

DATE: October 6, 2022

TITLE:

Unit 01, Lot 171 – 16917 Northwoods Blvd: Appeal of the Architectural Standards Committee Decision July 27, 2022

RECOMMENDATION:

By Motion:

The board of directors deny the appeal made by the Owner of Unit 01, Lot 171 and uphold the July 27, 2022 decision of the architectural standards committee.

BACKGROUND:

Pursuant to Tahoe Donner Covenants and Restrictions (C&Rs), Article V section 12, and Resolution 97-5, the board of directors is the appeal board for member appeals on decisions rendered by the architectural standards and covenants committee. An owner may appeal decisions of the committee(s) if they believe “that the committee has erred in the process of reaching its decision, has not adhered to the existing rules regarding said decision, or that there were extenuating circumstances that were not considered by the committee.” (TDA Resolution 97-5 section IV)

The property owner of Unit 010, Lot 171, Jeffrey James, is appealing the architectural standards committee’s July 27, 2022 hearing decision to deny the variance request for an unpermitted shed installation in the 5-foot side setback and public utility easement (PUE). The owner’s appeal is based on the opinion that the committee did not take into consideration the undue financial hardship of moving the shed and circumstances with installation and mitigating installation location. The owner is requesting the committee’s decision be overturned and that he be permitted to leave the shed in its current location.

ANALYSIS:

This analysis presents the procedures and actions the committee took on Unit 01, Lot 171, owner Jeffrey James’ submittal for an unpermitted shed installation and variance request. The analysis also presents the basis of reasoning for the committee’s decision to deny the variance request.

Property History

The owner of Unit 010, Lot 117 - 16917 Northwoods Blvd. contacted the Architectural Standards office (ASO) in 2020 to inquire about applying for a shed permit; after some communication delays between the owner and ASO staff due to the covid pandemic and staff furloughs, the shed was installed without a permit. While driving along Northwoods Blvd., managing staff saw the unpermitted shed as it stood out as new and did not match the house. The owner was contacted and instead of being called to a hearing, was asked to apply for a permit. There was a series of telephone and email communication between the owner and ASO staff since the owner had difficulty obtaining the necessary elevation plans by Tuff Shed required for a complete submittal. A survey was submitted





as part of the plans and showed the shed had been installed less than 1 foot from the eastern perimeter property line of the subject property. Staff informed the owner that he would also need to apply for a variance if he wanted to attempt to keep the shed in its current location. Once the application was deemed complete, a submittal review and action were scheduled with the architectural standards committee at the July 27, 2022 meeting.

A summary of the submittal decision follows with the July 27, 2022 meeting minutes available as Exhibit X:

Action 3:0 (Whitten, Phelps, Hipkins) The committee denied the variance and instructed the owner to move the shed at least 5 feet from the side property line.

Submittal Proceedings

The No Permit Submittal was held consistent with established procedures and guidelines as follows:

- Meeting Notice is sent via first-class mail to the owner stating the date, time, and reason for submittal.
 - ✓ Owner was sent a meeting notice dated July 1, 2022. The notice was sent via email for the July 27, 2022 hearing, with notice requirements met.
- The owner or representative was given the opportunity to discuss with the committee the no permit circumstances.
 - ✓ The owner, Jeffrey James, attended the submittal. The committee had a period of questioning with the owner.
- Neighbor Notification for a variance request is processed.
 - ✓ Neighbor Notification dated July 4, 2022: Properties within a 500-foot radius of Unit 01, Lot 171 were notified via first class mail of project submittal and variance request. No member comments were submitted nor made at the meeting.
 - ✓ The neighbors were given the opportunity to submit written comments ahead of the ASC Meeting and to attend an ASC Meeting on July 27, 2022, to explain their project concerns.
 - ✓ There were no neighbor comments received.
- The committee reviews any plans and other documentation relating to the submittal.
 - ✓ Committee reviewed the plans and documentation.
- The committee deliberates and takes action.
 - ✓ The committee held deliberations and took action to deny the variance request with conditional approval for the shed itself with no required material changes.
 - ✓ The committee provided, to the owner, their basis for denying the variance.
- The owner was provided a decision letter within the requisite timeframe established in the Architectural Standards procedures.
 - ✓ The owner was sent the committee's decision at the July 27, 2022, which is within the required 10-day period following the ASC meeting. The letter informed the owner of his right to appeal.



Committee Authority and Decision Making

The architectural standards committee's authority to approve or deny improvement projects, be a hearing body, assess fees and fines and inspect properties for maintaining the standards of the association is provided through delegation of authority by the board of directors and the covenants and restrictions (C&R) Article V Environmental and Architectural Control.

Shed Exterior

The committee is allowed, through their authority in C&R Article V and the Architectural Standards rules, to make decisions to approve or deny exterior improvements so long as their decision(s) meets the provisions of Article V section 6. In summary,

- Owner's plans and specifications conform; construction will result in harmony with external designs and landscaping; will not interfere with any other neighboring properties' reasonable enjoyment of scenic and solar access
- "Will otherwise be consistent with the architectural and aesthetic standards"
- "Shall act reasonably and in good faith"

The committee conditionally approved the shed structure with no requirement to change the roof material or windowpane color but accepted the owners statement to paint the walls to match the house to make the shed blend in with the environment.

Variance

TDA C&R Article V section 8 states,

The Environmental Control Committee shall be entitled to allow reasonable variances in any procedures specified in this Article, the ECC Rules, the minimum construction standards specified in Article VI or in any land use restrictions specified in Article VIII in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardship to Owner-applicants.

Section 8 further explains and explicitly lays out the procedure by which the committee can approve a variance request, so long as specific conditions are met - see Exhibit B for a full citing of the section.

Procedurally, before a variance is applied for, a preliminary meeting is held with the architectural standards committee to determine whether sufficient hardship exists to apply for a variance for setback encroachments. However, in the case of Mr. James' shed, he installed the shed without any review by the staff or committee.

As part of Mr. James's shed permit submittal, he requested a variance from the side setback restrictions in the C&Rs and Architectural Standards rules because the property survey verified that his shed was placed in the first five feet of the side setback. Additionally, the first five feet of Mr.





James' side setback is a Public Utility Easement, which has its own prohibitions. The C&R provisions for side setbacks and public utility easements, and the Architectural Standards rules related to such, are provided as Exhibit B.

While the committee has, at times, approved variances for encroachments into the first five feet of side setbacks after an applicant has successfully justified their needs and hardships, the committee did not feel they could approve this variance request because of the public utility easement (PUE) which would require the Truckee Donner Public Utility District (TDPUD) to first abandon the easement before any consideration. To our knowledge, the owner has not approached TDPUD with that request. As the easement still prevails, the committee denied the variance and required the shed to be moved out of the 5-foot side setback, indicating that it could be placed in the 10-foot side setback as an exception because that would be out of the PUE.

No-Permit and Fines

ASC Rules allow for a hearing and possible fine for construction without a permit. In this case, a hearing was waived and instead the owner was granted permission to apply for a shed permit with a variance. The committee and staff have taken a more positive approach to dealing with no-permit improvements over the last five years, when not egregious, as part of implementing recommendations from the ASO/ASC task force. Additionally, after initial review of the no-permit shed, staff and the committee recognized the communication challenges during the initial months of COVID when 50+% of TDA staff were on furlough and members were facing similar circumstances of life disruption.

OUTREACH:

The property owner received the committee decision letter containing the action statement within 10 business days as required, mailed August 2, 2022, sent 6 business days after the July 27, 2022 architectural standards committee meeting.

The property owner was notified of appeal acceptance and scheduling appropriately.

FISCAL IMPACT:

N/A

ALTERNATIVE:

Pursuant to Resolution 97-5, the board has a number of alternatives:

1. The board may reverse or modify a decision of the committee;
2. The board may choose to approve an appeal;
3. The board may make findings related to the factors and/or the applicability of the rules and return a matter to the committee for further consideration; and/or
4. The board may recommend specific action to be undertaken by the General Manager relative to individual case(s) or Tahoe Donner policies. Such recommendations may include appropriate review by legal counsel.





ATTACHMENTS:

Exhibit A: Map, Plot Map

Exhibit B: Covenants and Restrictions, Architectural Standards Rules

Exhibit C: Shed and Variance Project Application (ASC Meeting Packet)

Exhibit D: Architectural Standards Committee Meeting Notice

Exhibit E: Neighbor Notification sample

Exhibit F: Architectural Standards Decision Letter

Exhibit G: July 27, 2022 Architectural Standards Meeting Minutes

Exhibit H: Appeal Request Form and Basis of Appeal

Prepared By: Annie Rosenfeld, Director of Administrative Services

Board Meeting Date: October 11, 2022

General Manager Approval to Place on the Agenda: _____

